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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO
09/669,400	09/22/2000	Fritz Schaefer		2814
7590 04/02/2004		EXAMINER		
Fritz Schaefer			GRIFFIN, WALTER DEAN	
Industrial Microwave Technologies, Inc. 545 Brandywine Drive			ART UNIT	PAPER NUMBER
Colorado Spring, CO 80906			1764	
			DATE MAILED: 04/02/2004	1

Please find below and/or attached an Office communication concerning this application or proceeding.

Application No.   Application No.   Applicant(s)   Option Action Summary   Examiner   Art Unit   Walter D. Griffin   Art Unit   Triped Mal/LING DATE of this communication appears on this cover sheet with the correspondence address - Period for Repty   A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILURG DATE OF THIS COMMUNICATION.   Extensions of time may be available under the provisions of 37 GFR 1.136(b). In row event, however, may a reply be friendy find sites 30, 80 GW/MTR bloom be required about for the provisions of 37 GFR 1.136(b). In the case of the provision of the control of the case of the control of the case of the control of the case of the									
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2a)  This action is FINAL. 2b)  This action is non-final.  3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4)  Claim(s) 1-5.7-20.22 and 23 is/are pending in the application.  4a) Of the above claim(s)  is/are withdrawn from consideration.  5)  Claim(s) 13-20 is/are allowed.  6)  Claim(s) 1-5.7-12.22 and 23 is/are rejected.  7)  Claim(s)  is/are objected to.  8)  Claim(s)  are subject to restriction and/or election requirement.  Application Papers  9)  The specification is objected to by the Examiner.  10)  The drawing(s) filed on  is/are: a  accepted or b  objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.  Priority under 35 U.S.C. § 119  12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  a)  All b)  Some  Ol None of:  1.  Certified copies of the priority documents have been received.  2.  Certified copies of the priority documents have been received in Application No.  3.  Copies of the certified copies of the priority documents have been received.  Attachment(s)  1)  Notice of References Cited (PTO-992)  1)  Notice of References Cited (PTO-992)  5)  Notice of Informal Patent Application (PTO-152)	Status								
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#### **DETAILED ACTION**

# Response to Amendment

The claim objections and the claim rejections under 35 USC 112 except for the rejection of claim 12 as described in paper no. 2 have been withdrawn in view of the amendment filed on February 2, 2004. Also, the rejection of claims 7-12 under 35 USC 103 as described in paper no. 2 has been withdrawn in view of the amendment. The Kriegel reference does not disclose a process without a dewatering step. New rejections follow.

#### Oath/Declaration

The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because it lists only one provisional application. It appears as if it should also list provisional application 60/171915.

## Specification

The disclosure is objected to because of the following informalities: The disclosure lacks a reference to the provisional application. This reference must be included on page 1 of the specification.

Appropriate correction is required.

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## Claim Objections

Claims 7 and 14 are objected to because of the following informalities: Claim 7 is objected to because the word "form" in step (b) should be "from". Claim 14 is objected to because the word "of" in the last line of the claim is unnecessary. Appropriate correction is required.

Claim 8 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim, or amend the claim to place the claim in proper dependent form, or rewrite the claim in independent form.

Claim 8 is objected to because it does not further limit claim 7. Claim 7 already contains the microwave heating limitation.

#### Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7-12 and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 12 is indefinite because the expression "the demulsified oil" lacks proper antecedent basis in claim 7.

Claim 22 is indefinite because it depends on canceled claim 21. Therefore, the scope of claim 22 cannot be ascertained.

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Claims 7-12 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted step is the required heating step. A heating step is required in the process but claims 7-12 do not contain a heating step if the water content of the used oil is 4% or less. The examiner recommends that the limitations of claim 23 be incorporated into claim 7 so that the required heating step is present for all used oil streams and not just for streams that have greater than 4% water.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 7-12 and 23 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention.

It appears as if the limitations that the process is performed without a dewatering step (claim 7), that the used oil is heated by microwave when the used oil stream has greater that 4% water (claim 7), and that the used oil is heated by conventional means when the used oil stream has not greater than 4% water (claim 23) were not described in the specification as filed. One having ordinary skill in the art would be required to perform undue experimentation to determine the used oil characteristics that would benefit from conventional or microwave heating.

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Additionally, the negative limitation (i.e, without a dewatering step) does not have basis in the original disclosure. The mere absence of a positive recitation is not basis for an exclusion.

## Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Kriegel et al. (4,522,707).

The Kriegel reference discloses a burnable used oil fuel product. See col. 2, line 49 through col. 3, line 12. Since claims 1-5 are drawn to a composition, the process steps in claims 1-5 do not distinguish the claimed product from that disclosed in Kriegel.

# Allowable Subject Matter

Claims 13-20 are allowed.

Claim 22 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

The prior art of record does not disclose or suggest an apparatus as claimed that contains a microwave heating section.

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#### Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter D. Griffin whose telephone number is (571) 272-1447. The examiner can normally be reached on Monday-Friday 6:30 to 4:00 with alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola can be reached on (571) 272-1444. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Walter D. Griffin Primary Examiner Art Unit 1764

WG March 30, 2004